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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,552	03/25/2004	Yasushi Yatsuda	ST3001-0038	4922
39083 7590 06/13/2008 CERMAK KENEALY & VAIDYA, LLP 515 EAST BRADDOCK RD SUITE B Alexandria, VA 22314				
EXAMINER TON, ANABEL				
ART UNIT 2875		PAPER NUMBER		
MAIL DATE 06/13/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/808,552

**Applicant(s)**

YATSUDA ET AL.

**Examiner**

ANABEL M. TON

**Art Unit**

2875

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 7-10, 12-32 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7-10, 12-32 and 34-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant attempts to recite a relation between a given ridgeline and a second ridgeline, but fails to identify either in the drawings or explain where a given and second ridgeline are located with respect to the base.
3. As best understood the following rejection applies.

### ***Claim Rejections - 35 USC § 103***

1. Claims 1-3, 5, 7-10, 12-32, 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thominet.
  - Thominet discloses a base (12); a plurality of LED elements located adjacent the base (10); and a light shielding device located adjacent the base and formed in the shape of a light distribution pattern (16), wherein the LED elements are arranged in such a manner as to correspond to the shape of the light shielding device (fig 1), and in such a manner as to form an emission shape suited for a

light distribution pattern for a vehicle headlight (abstract), and at least some of the LED elements are arranged along a given ridgeline (the LEDs arranged along the upper, lower, right or left sides satisfies this limitation); a drive device capable of supplying different drive currents to the LED elements, wherein at least one of the LED elements is driven by a different drive current as compared to another of the LED elements (col. 4-5 lines 50-67, 1-25 respectively). With regards to claim 9, inherently the base of Thomniet has at least one cavity for accommodating the LED's since the leads of the LEDs must be soldered through the base/pc board in order to be electrically connected thereof. Thomniet is considered to have the LEDs arranged in such a manner as to form a brightness distribution suitable for a vehicle headlight; a projection lens (14). With regards to claim 14, since the LEDs of Thomniet are capable of illuminating individually or in groups, the limitation of "formed in a non symmetrical array" is considered to be satisfied; the optical axis is located at positioning the substantial center of the array (fig 2),

- With regards to the LED's being different in size one compared to the other, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the LED's of Thomniet different in size, since it has been held by the courts that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device, and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior

art device. *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984),). It appears that the disclosed device would perform equally well shaped as disclosed by Thomniet since the end result of the device is to provide a light distribution pattern for a headlight.

- With regards to the LED's being triangular, rectangular parallelogramic or square in shape, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include these shapes in the shapes of the LEDs provided by Thomniet, since it has been held by the courts that a change in shape or configuration, without any criticality, is nothing more than one of numerous shapes that one of ordinary skill in the art will find obvious to provide based on the suitability for the intended final application. See *In re Dailey*, 149 USPQ 47 (CCPA 1976). It appears that the disclosed device would perform equally well shaped as disclosed by Thomniet.

### ***Response to Arguments***

2. Applicant's arguments filed 02/25/08 have been fully considered but they are not persuasive. Applicant argues that Thomniet only teaches a rectangular matrix of light sources and does not teach the LED elements in a non-symmetrical array. For the reasons stated above, the LED's of THominet may illuminate in a predetermined array including non-symmetrical therefore this limitation is satisfied. With regards to applicant's argument that the case law cited is in error with regards to obviousness rejection made regarding the size of the LED elements, the examiner disagrees with

applicant's assessment for the reasons stated above. With regards to applicants argument regarding the criticality of the arrangement of the LED's being parallelogramic of triangular, Thominet discloses that the LED's may be illuminated in any predetermined array including the full rectangular shape or any other predetermined arrangement within the confines of the array, therefore any particular shape, as disclosed by applicant that the array may be formed in is considered to be obviated by Thominet. The term "given ridgeline" is still considered to be indefinite since there is no reference point claimed so as to identify a first or second ridgeline. For these reasons the rejection is maintained and is made final.

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANABEL M. TON whose telephone number is (571)272-2382. The examiner can normally be reached on 08:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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